

## **DRAFT REGULATION 5005.1**

### **Regulation 36-14-5005.1 Prohibited Activities - Nepotism.**

(a) For the purposes of applying the provisions of this regulation, the following definitions apply:

(1) "Household member" means a person having legal residence or living in an individual's place of residence.

(2) "Any person within his or her family" means, in addition to any other definition, any person who is related to any public official or public employee, whether by blood, marriage or adoption, as any of the following: father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, uncle, aunt, niece, nephew, and first cousin.

(b) In addition to any other provisions of the Code of Ethics the following prohibitions relating to nepotism shall apply:

(1) Nepotism Generally. No person subject to the Code of Ethics shall participate in any matter as part of his or her public duties if he or she has reason to believe or expect that any person within his or her family, or any household member, is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be.

(2) Advocacy/Supervision Regarding Family/Household Members.

(A) No person subject to the Code of Ethics shall participate in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his or her family or a household member, in the state or municipal agency in which the official or employee is serving or over which he or she exercises fiscal or jurisdictional control, except in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion.

(B) No person subject to the Code of Ethics shall delegate to a subordinate any tasks relating to the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his or her family or household members, except in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion.

(3) Participation in Budgets.

(A) No person subject to the Code of Ethics shall participate in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his or her family or a household member.

(B) Notwithstanding the prohibition set forth in subsection 3(A), a person subject to the Code of Ethics may participate in discussion or decision-making relative to a budgetary line item that addresses or affects the employment, compensation or benefits of any person within his or her family or a household member as a member of a significant and definable class of persons to no greater extent than any other similarly situated member of the class, and not individually.

(C) Notwithstanding the prohibition set forth in subsection 3(A), a person subject to the Code of Ethics may participate in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his or her family or household member is impacted by the entire budget as a member of a significant and definable class of persons to no greater extent than any other similarly situated member of the class.

(4) Participation in Collective Bargaining/Employee Contracts.

(A) No person subject to the Code of Ethics shall participate in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of any person within his or her family or a household member.

(B) Notwithstanding the prohibition set forth in subsection 4(A), a person subject to the Code of Ethics may participate in a decision to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his or her family or household member is impacted therein as a member of a significant and definable class of persons to no greater extent than any other similarly situated member of the class.

(5) Accepting Employment Resulting from Influence of Family/Household Member. No person subject to the Code of Ethics shall accept an appointment, employment, promotion, employment advantage or advancement in or to a position in a state or municipal agency if such appointment, employment, promotion, employment advantage or advancement resulted in whole or in part from the influence of an official or employee, serving in or exercising jurisdictional or fiscal control over the agency, who is any person within his or her family or a household member.

(6) Accepting Employment Where Family/Household Member is Head of Agency.

(A) No person subject to the Code of Ethics shall seek or accept employment in a state or municipal agency, the head of which is any person within his or her family or a household member, except in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion.

(B) The provisions of subsection 6(A) shall not be construed to prohibit the continued employment or promotional advancement of a person whose employment with a particular agency preceded and existed on the effective date of this regulation, notwithstanding the fact that any person within his or her family or a household member is or subsequently becomes the head of the agency.

## **DRAFT REGULATION 5014**

### **Regulation 36-14-5014 Prohibited Activities - Municipal Official Revolving Door.**

- (a) No municipal elected official or municipal school committee member, whether elected or appointed, while holding office and for a period of one (1) year after leaving municipal office, shall seek or accept employment with any municipal agency in the municipality in which the official serves, other than employment which was held at the time of the official's election or appointment to office or at the time of enactment of this regulation, except as provided herein.
  - (1) For purposes of this regulation, "employment" shall include service as defined in R.I. Gen Laws § 36-14-2(4) and shall also include service as an independent contractor or consultant to any municipality or municipal agency, whether as an individual or a principal of an entity performing such service.
  - (2) For purposes of this regulation, "municipal agency" shall include any department, division, agency, commission, board, office, bureau, authority, quasi-public authority, or school, fire or water district and any other agency that is in any branch of municipal government and exercises governmental functions other than in an advisory nature.
- (b) Nothing contained herein shall prohibit a municipal elected official or municipal school committee member, whether elected or appointed, from seeking or being elected to any elective office.
- (c) The Rhode Island Ethics Commission may authorize exceptions to this regulation where such exceptions would not create an appearance of impropriety.

## **DRAFT REGULATION 5015**

### **Regulation 36-14-5015 Prohibited Activities - Municipal Staff Revolving Door.**

- (a) No person holding a senior policy-making, discretionary, or confidential position, including but not limited to a department director position, on the staff of the chief executive officer in municipal government, which may include the positions of town administrator, mayor or town manager, shall seek or accept any other employment with any municipal agency in the municipality in which he or she serves, while serving in said position and for a period of one (1) year thereafter.
  - (1) For purposes of this regulation, "employment" shall include service as defined in R.I. Gen Laws § 36-14-2(4) and shall also include service as an independent contractor or consultant to any municipality or municipal agency, whether as an individual or a principal of an entity performing such service.
  - (2) For purposes of this regulation, "municipal agency" shall include any department, division, agency, commission, board, office, bureau, authority, quasi-public authority, or school, fire or water district and any other agency that is in any branch of municipal government and exercises governmental functions other than in an advisory nature.
- (b) Notwithstanding the foregoing, a person holding a senior policy-making, discretionary, or confidential position, including but not limited to a department director position, on the staff of the chief executive officer in municipal government, which may include the positions of town administrator, mayor or town manager, who has a minimum of five (5) years of uninterrupted municipal service in that municipality shall be exempt from the provisions of this section. "Municipal service" as used herein means service in the classified, unclassified and non-classified services of the municipality or municipal agency, but shall not include service in any municipal elective office.
- (c) Nothing contained herein shall prohibit a person holding a senior policy-making, discretionary, or confidential position, including but not limited to a department director position, on the staff of the chief executive officer in municipal government, which may include the positions of town administrator, mayor or town manager, from seeking or accepting any other senior policy-making, discretionary, or confidential position on that municipal official's staff, or from seeking or accepting appointment as a municipal department director.
- (d) Nothing contained herein shall prohibit a person holding such a senior policy-making, discretionary or confidential staff position from seeking or being elected to any elective office.

- (e) The Rhode Island Ethics Commission may authorize exceptions to this regulation where such exemption would not create an appearance of impropriety.

## **DRAFT REGULATION 5016**

### **Regulation 36-14-5016 Prohibited Activities - Revolving Door, "Employment" Defined.**

For purposes of R.I. Gen. Laws §§ 36-14-5(n) and 36-14-5(o) "employment" shall also include service as an independent contractor or consultant to the state or any state agency, whether as an individual or a principal of an entity performing such service.

## **DRAFT REGULATION 5017**

### **ALTERNATIVE # 1**

#### **Regulation 36-14-5017 Prohibited Activities – State Executive/Administrative Revolving Door.**

(a) No person holding or fulfilling a position in the Governor's Office or the Department of Administration who in the course of and by reason of his or her official duties has substantial involvement in matters involving a state agency, as defined herein in subsection (a)(5), shall:

(1) Represent him or herself, as defined in Regulation E(a), before the state agency with which he or she has substantial involvement unless the Ethics Commission shall give its approval for such representation in a written advisory opinion and further provided that such approval shall not be granted unless:

(a) The Ethics Commission is satisfied that denial of such representation would create a hardship, and

(b) The person shall first:

(1) Advise the Governor's Office or the Department of Administration and the state agency in writing of the existence and the nature of his or her relationship with the agency and his or her interest in the matter at issue.

(2) Recuse him or herself from participating in the state agency's consideration and disposition of the matter at issue, and

(3) Follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person, as defined in Regulation E(b), before the state agency with which he or she has substantial involvement in the course of and by reason of his or her official duties.

(3) Engage in any of the activities prohibited by subsection (a)(1) or (a)(2) of this regulation, for a period of one year after he or she has officially severed his or her position with the Governor's Office or the Department of Administration, unless:

(a) Such representation is in the proper discharge of his or her official duties; or

(b) The particular matter before the state agency requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(4) For purposes of this regulation "substantial involvement" shall include, but is not necessarily limited to, substantial control or substantial influence over and/or substantial participation in matters involving budget, communications, legal, legislative, or policy



matters. Positions exercising such involvement shall include, but are not limited to, Budget Officer, Chief of Staff, Deputy Chief of Staff, Executive Counsel, Communications Director, Director of Administrative Services, Director of Policy, and Director of Legislative Affairs.

(5) For purposes of this regulation a state agency shall include, but is not necessarily limited to, any agency, board, bureau, commission, committee, department, division, governmental entity, office, or quasi-public authority in the executive branch of state government, or any agency or committee thereof, that exercises governmental functions and is not part of another constitutional office.

(6) For purposes of this regulation a person holding a position in the Governor's Office shall include, but is not necessarily limited to, Chief of Staff, Deputy Chief of Staff, Executive Counsel, Communications Director, Director of Administrative Services, Director of Policy, and Director of Legislative Affairs.

(b) No director or head of a state department, enumerated in Rhode Island General Laws § 42-6-1 and as may be amended from time to time, shall:

(1) Represent him or herself, as defined in Regulation E(a), before the Governor's Office or the Department of Administration unless the Ethics Commission shall give its approval for such representation in a written advisory opinion and further provided that such approval shall not be granted unless:

(a) The Ethics Commission is satisfied that denial of such representation would create a hardship, and

(b) The person follows any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person, as defined in Regulation E(b), before the Governor's Office or the Department of Administration.

(3) Engage in any of the activities prohibited by subsection (b)(1) or (b)(2) of this regulation, for a period of one year after he or she has officially severed his or her position, unless:

(a) Such representation is in the proper discharge of his or her official duties; or

(b) The particular matter before the Governor's Office or Department of Administration requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority to exercise discretion or render decisions.

## **DRAFT REGULATION 5017**

### **ALTERNATIVE # 2**

#### **Regulation 36-14-5017 Prohibited Activities – State Executive/Administrative Revolving Door.**

(a) No person holding or fulfilling a position in the Governor's Office or the Department of Administration who in the course of and by reason of his or her official duties has substantial involvement in matters involving a state agency, as defined herein in subsection (a)(5), shall:

(1) Represent him or herself, as defined in Regulation E(a), before the state agency with which he or she has substantial involvement unless the Ethics Commission shall give its approval for such representation in a written advisory opinion and further provided that such approval shall not be granted unless:

(a) The Ethics Commission is satisfied that denial of such representation would create a hardship, and

(b) The person shall first:

(1) Advise the Governor's Office or the Department of Administration and the state agency in writing of the existence and the nature of his or her relationship with the agency and his or her interest in the matter at issue.

(2) Recuse him or herself from participating in the state agency's consideration and disposition of the matter at issue, and

(3) Follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person, as defined in Regulation E(b), before the state agency with which he or she has substantial involvement in the course of and by reason of his or her official duties.

(3) Engage in any of the activities prohibited by subsection (a)(1) or (a)(2) of this regulation, for a period of one year after he or she has officially severed his or her position with the Governor's Office or the Department of Administration, unless:

(a) Such representation is in the proper discharge of his or her official duties; or

(b) The particular matter before the state agency requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(4) For purposes of this regulation "substantial involvement" shall include, but is not necessarily limited to, substantial control or substantial influence over and/or substantial participation in matters involving budget, communications, legal, legislative, or policy

matters. Positions exercising such involvement shall include, but are not limited to, Budget Officer, Chief of Staff, Deputy Chief of Staff, Executive Counsel, Communications Director, Director of Administrative Services, Director of Policy, and Director of Legislative Affairs.

(5) For purposes of this regulation a state agency shall include, but is not necessarily limited to, any agency, board, bureau, commission, committee, department, division, governmental entity, office, or quasi-public authority in the executive branch of state government, or any agency or committee thereof, that exercises governmental functions and is not part of another constitutional office.

(6) For purposes of this regulation a person holding a position in the Governor's Office shall include, but is not necessarily limited to, Chief of Staff, Deputy Chief of Staff, Executive Counsel, Communications Director, Director of Administrative Services, Director of Policy, and Director of Legislative Affairs.

(b) No director or head of a state department, enumerated in Rhode Island General Laws § 42-6-1 and as may be amended from time to time, and including directors and heads of divisions within the Department of Administration who are appointed by the Governor and/or the Director of the Department Administration, shall:

(1) Represent him or herself, as defined in Regulation E(a), before the Governor's Office or the Department of Administration unless the Ethics Commission shall give its approval for such representation in a written advisory opinion and further provided that such approval shall not be granted unless:

(a) The Ethics Commission is satisfied that denial of such representation would create a hardship, and

(b) The person follows any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person, as defined in Regulation E(b), before the Governor's Office or the Department of Administration.

(3) Engage in any of the activities prohibited by subsection (b)(1) or (b)(2) of this regulation, for a period of one year after he or she has officially severed his or her position, unless:

(a) Such representation is in the proper discharge of his or her official duties; or

(b) The particular matter before the Governor's Office or Department of Administration requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority to exercise discretion or render decisions.

## **DRAFT REGULATION 5018**

### **Regulation 36-14-5018 Prohibited Activities - Representing Oneself or Others, Defined.**

In addition to any other definition or provision of the Code of Ethics:

(a) A person "represents him or herself before a state or municipal agency" if:

(1) he or she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his or her own favor;

(2) pursuant to his or her authorization and/or direction, another person participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his or her favor; or

(3) he or she engages in the conduct described in subsections (a)(1) or (a)(2) before another agency for which he or she is the appointing authority or a member thereof.

(b) A person "represents any other person before a state or municipal agency" if:

(1) he or she is authorized by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person;

(2) he or she acts as an expert witness with respect to any matter the agency's disposition of which will or can reasonably be expected to directly result in an economic benefit or detriment to him, or herself, or any person within his or her family or any business associate of the person of any business by which the person is employed or which the person represents; or

(3) he or she engages in the conduct described in subsection (b)(1) or (b)(2) before another agency for which he or she is the appointing authority or a member thereof.

## PROPOSED AMENDMENT TO REGULATION 5006

*Ethics Commission Regulation 5006 entitled "Employment From Own Board," is hereby amended to read as follows:*

### **Regulation 36-14-5006 Employment From own Board.**

No elected or appointed official may accept any appointment or election that requires approval by the body of which he or she is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one (1) year after termination of his or her membership in or on such body, unless the Ethics Commission shall give its approval for such appointment or election, and, further provided, that such approval shall not be granted unless the Ethics Commission is satisfied that denial of such employment or position would create a substantial hardship for the body, board, or municipality.

## PROPOSED REPEAL OF REGULATION 5007

### **Regulation 36-14-5007 Prohibition on State Employment.**

~~No member of the General Assembly shall seek or accept state employment as an employee or consultant, not held at the time of the member's election, while serving in the General Assembly and for a period of one (1) year after leaving legislative office.~~